

WEST VIRGINIA BOARD OF MEDICINE  
Petitioner Below/Appellee

VS:

KATHERINE HOOVER, M.D.  
Respondent Below/Appellant

CIVIL ACTION NO. 08-355 AAA-5

ORDER GRANTING MOTION FOR PARTIAL STAY

The motion of Katherine Hoover, M.D., Appellant, for stay of the orders issued by Appellee West Virginia Board of Medicine pending this appeal, came on for hearing on November 17, 2008. Appellant appeared by counsel C. Christopher Younger, Esq., and C. Page Hamrick, Esq. Appellee appeared by counsel, Debra L. Hamilton, Esq., Deputy Attorney General. The Court considered the pleadings and argument of counsel.

On a temporary basis, and pending the resolution of this appeal, the Court finds:

1. This Court has jurisdiction to consider the motion to stay the final order of the West Virginia Board of Medicine entered on September 11, 2008, inasmuch as the Board's Order revoked Appellant's license to practice medicine, however, the revocation was itself stayed and instead the Appellant was placed on probation for five years. Accordingly, West Virginia Code Section 30-1-9, which provides that "no order shall be made or entered by the court to stay or supercede any suspension, revocation or cancellation of any such certificate, license, registration or authority, precluding a stay by a Court, does not apply because no suspension, revocation or cancellation of a medical license is currently in effect. Therefore, the Court has jurisdiction to enter an order staying the Order. Further, the Court is not refused jurisdiction to grant a stay during the pendency of an appeal by West Virginia Code Section 30-3-114(b) and Section 29-5A-4.
2. The Petition for Appeal raises substantial legal issues sufficient for the Appellant to prevail on appeal.
3. It would cause irreparable harm to Appellant should she have to comply with the Order pending resolution of this appeal, and especially requiring the payment of over \$27,000.00 in costs. It is noted that Appellant has already paid the fine imposed of \$1,000.00, indicating her

good faith in this appeal, so this matter has already cost her substantial funds pending the appeal.

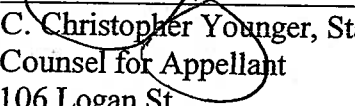
The Court does according ORDER that the Order of the Appellee West Virginia Board of Medicine, entered September 11, 2008, insofar as it requires Katherine Hoover, M.D. to pay the costs of \$27,437.07, is STAYED until further order of the Court, and otherwise the Order shall remain in effect, which stay is effective NUNC pro TUNC on November 17, 2008, and the subsequent Order of the West Virginia Board of Medicine entered January 12, 2008, is STAYED until further order of the Court inasmuch as that subsequent order is predicated on the failure to pay the costs which issue is now moot until further order of the Court, and the issue of revocation of license is therefore stayed pending the final resolution of this matter.

The Clerk shall send copies hereof to counsel of record.

Enter this 22<sup>nd</sup> day of January, 2009.

JUDGE

Presented By:

  
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